

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

The Department of Transportation of the State of Illinois, for and :
on behalf of the People of the State of Illinois, :
Petitioner, :

Vs. :

Burlington Northern and Santa Fe Railway Company, :
Respondent. :

T03-0047

Petition for an Order granting permission to construct a new :
highway overpass structure carrying IL 41 over BNSF's tracks :
South of Galesburg, Knox County, Illinois. :

ORDER

By the Commission:

On May 20, 2003, the Illinois Department of Transportation ("Petitioner") filed the above captioned petition with the Illinois Commerce Commission ("Commission") naming The Burlington Northern and Santa Fe Railway Company ("Railroad") as Respondent.

Pursuant to notice as required by law and the rules and regulations of the Commission, the matter came on for hearing before a duly authorized Administrative Law Judge of the Commission on July 22, 2003 and August 6, 2003 at the Commission's offices in Springfield, Illinois. Petitioner and the Railroad were represented by Counsel throughout the proceedings. At the conclusion of the hearing on August 6, 2003, the case was marked "Heard and Taken."

The Petition alleges that due to Petitioner's desire to realign IL 41 (FAP Route 574), a new highway overpass structure must be constructed to carry IL 41 (FAP Route 574) over the Railroad's single mainline track approximately two miles south of Galesburg, Knox County, Illinois. Furthermore, the Petition alleges that the construction project is necessary to preserve and promote the safety of the public and for public convenience and necessity.

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction of the subject matter and the parties;

- (2) the recitals of fact set forth in the prefatory portion of this order are supported by the evidence of record and are hereby adopted as findings of fact;
- (3) Petitioner proposes to construct a new highway overpass structure carrying IL 41 (FAP Route 574) over the Railroad's single mainline track approximately two miles south of Galesburg, Knox County, Illinois and further proposes that the existing IL 41 roadway remain under its jurisdiction as solely an access to the adjacent industrial facilities (Koppers Industries);
- (4) the proposed overpass structure is part of a roadway improvement project on IL 41 initiated by Petitioner and is necessary to preserve the safety of the public and for public convenience and necessity;
- (5) Petitioner proposes to fund the proposed new highway overpass structure including the costs incurred by the Railroad for the proposed signal wire relocations, which are estimated at \$101,198.00;
- (6) Petitioner proposes to assume responsibility for the new highway overpass structure, the highway approaches, and all other highway facilities;
- (7) Petitioner proposes that the Railroad continue being responsible for maintaining the existing railroad ballast, ties, rail, and all other railroad facilities.
- (10) Chapter 625 ILCS 5/18c-1702 and 5/18c-1704 require each "person" as defined by Section 5/18c-1104, to comply with every regulation or order of the Commission; these sections further provide that any person who fails to comply with a Commission regulation or order shall forfeit to the State not more than \$1,000 for each such failure, with each day's continuance of the violation being considered a separate offense; while the Commission expects all parties to comply with this Order in all matters addressed herein and in a timely manner, the Commission advises that any failure to comply may result in the assessment of such sanctions.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that permission and authority be, and they are hereby, granted to the Illinois Department of Transportation to construct a new grade separation structure to carry IL 41 (FAP Route 574) over the mainline track of The Burlington Northern and Santa Fe Railway Company approximately two miles south of Galesburg, as

set forth in the plan sheets submitted by the Illinois Department of Transportation and admitted into evidence as Petitioner's Exhibit No. 1.

IT IS FURTHER ORDERED that the costs for the work to be performed by the Illinois Department of Transportation and The Burlington Northern and Santa Fe Railway Company to construct the new grade separation structure shall be assessed to the Illinois Department of Transportation. The Burlington Northern and Santa Fe Railway Company's estimate of costs for the proposed signal wire relocations is currently \$101,198.00. However, the Illinois Department of Transportation shall pay The Burlington Northern and Santa Fe Railway Company their actual incurred costs.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall be responsible for the new highway overpass structure, the highway approaches, and all other highway facilities; and the Burlington Northern & Santa Fe Railway Company shall continue to be responsible for maintaining the existing railroad ballast, ties, rail, and all other railroad facilities.

IT IS FURTHER ORDERED that the Illinois Department of Transportation shall, at six month intervals from the date of this order, file with the Director of Processing, Transportation Division, Illinois Commerce Commission, written progress reports for the project herein authorized.

IT IS FURTHER ORDERED that the work herein required shall be completed within thirty (30) months of the date of this Order.

IT IS FURTHER ORDERED that, within five (5) days after the completion of the work herein authorized, Petitioner shall provide written notice thereof to said Director of Processing.

IT IS FURTHER ORDERED that any person making a Request For Extension of Time up to thirty (30) days to complete a project ordered by the Commission must file a request with the Director of Processing no later than fourteen (14) days in advance of the schedule deadline. An Administrative law Judge will consider and decide the request.

IT IS FURTHER ORDERED that any person requesting an extension of time that exceeds thirty (30) days must file a Petition for Supplemental Order with the Director of Processing no later than twenty-one (21) days in advance of the scheduled deadline. The Commission will decide Petitions for Supplemental Orders.

IT IS FURTHER ORDERED that Requests for Extensions of Time and Petitions for Supplemental Orders must include the reason(s) the additional time is needed to complete the work and the time within which the project will be completed. Prior to submitting a Request for Extension of Time or a Petition for

Supplemental Order, the person must notify the Commission's Rail Safety Program Administrator that it is unable to complete the project within the ordered timeframe.

IT IS FURTHER ORDERED that the Commission or its Administrative Law Judge reserves the right to deny Requests for Extension of Time and Petitions for Supplemental Orders if the reason(s) supporting the request is insufficient or where it appears the person has not made a good faith effort to complete the project within the allotted time. Failure of the Commission or Administrative Law Judge to act on a pleading prior to the deadline means the originally ordered completion date remains in effect.

IT IS FURTHER ORDERED that the Illinois Department of Transportation and Burlington Northern & Santa Fe Railway Company shall comply with the clearance requirements of 92 Ill. Adm. Code 1500.

IT IS FURTHER ORDERED that in accordance with 625 ILCS 5/18c-2201 and 5/18c-2206 of the Illinois Commercial Transportation Law, this is a final order subject to the Administrative Review Law.

By Order of the Commission this 17th day of December 2003.

JUDGE <i>JH</i>
SECTION CHIEF
<i>plh</i> ORDERS SUPERVISOR

Edward C. Hurley
Chairman